IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.7152 OF 2005

M/s.Hindustan Lubricants ..Petitioner.

V/s.

The Union of India ..Respondent.

Mr.Prakash Shah with Mr.Jayesh Motwani i/b. P.D.S. Legal for petitioner.

Mr.Y.S.Bhate with V.H.Kantharia for respondent.

CORAM : H.L.GOKHALE AND J.P.DEVADHAR, JJ.

DATED : 30TH NOVEMBER, 2005.

P.C. :-

1. Rule, returnable forthwith.

2. Mr.Y.S.Bhate appearing for respondents waives service.

3. Heard finally with the consent of the parties.

4. Heard Mr.Motwani in support of the petitioner. Mr.Bhate appears for respondent. The only question which is sought to be raised in this matter is concerning the restoration of Appeal No.E/801 V to 860/

99-Mum. It appears that for some reasons or the other the appellant did not remain present before the Tribunal. The reason given is that there was some discrepancy about the address and not receiving the notice of hearing. As far as the Tribunal is concerned, the Tribunal has in fact been lenient and has twice restored the appeal which was dismissed earlier.

5. However, with a view to give one more opportunity, we restore this appeal subject to payment of costs of Rs.5,000/- to be paid by the petitioner to the Commissioner of Central Excise, Mumbai-III within four weeks from today. If the costs of Rs.5,000/- is not paid within four weeks from today, then the impugned order would stand revived. The appeal will be listed before the Tribunal on 16/01/2006. Both the parties have the notice of this date, on which date the petitioner to remain present and proceed with the original appeal.

7. For the reasons stated above, we set aside the impugned order dismissing the restoration application and restore the appeal only with view to give an opportunity to the petitioner.

8. It will be open to the Tribunal to pass

appropriate orders in the event the petitioner does not remain present on the date now stipulated herein.

9. All rival contentions are kept open.

10. Petition is allowed. Rule made absolute in terms of the above order.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)